

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

**FEDERAL INSURANCE
COMPANY, PACIFIC
EMPLOYERS INSURANCE
COMPANY, ACE AMERICAN
INSURANCE COMPANY, ACE
PROPERTY AND CASUALTY
INSURANCE COMPANY,
INDEMNITY INSURANCE
COMPANY OF NORTH
AMERICA, and WESTCHESTER
FIRE INSURANCE COMPANY,**

Plaintiffs,

v.

SHAW INDUSTRIES, INC.,

Defendant,

and

**COMMERCE & INDUSTRY
INSURANCE COMPANY; FIRST
STATE INSURANCE COMPANY;
EMPLOYERS INSURANCE
COMPANY OF WAUSAU; GREAT
AMERICAN INSURANCE
COMPANY; U.S. FIRE
INSURANCE COMPANY;
TRAVELERS CASUALTY AND
SURETY COMPANY; JOHN DOE
INSURERS 1-100;**

Nominal Defendants.

**CIVIL ACTION NO.:
1:23-cv-01367-RDP**

**UNOPPOSED MOTION FOR LEAVE TO FILE THE FIRST
AMENDED COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff, Federal Insurance Company (“Federal”), and Pacific Employers Insurance Company, ACE American Insurance Company, ACE Property and Casualty Insurance Company Indemnity Insurance Company of North America, and Westchester Fire Insurance Company with respect to the policies novated from International Insurance Company (collectively the “Additional Plaintiff Insurers”), by and through its undersigned counsel, move this Court for leave to file a First Amended Complaint under Rule 15(a)(2).

I. INTRODUCTION

1. On October 11, 2023, Federal and the Additional Plaintiff Insurers filed a Complaint in this court. (ECF 1).

a. Renaming of Employers Mutual Liability Insurance Company

2. The Complaint named “Employers Mutual Liability Insurance Company” as a defendant and insurer of Shaw Industries, Inc. (“Shaw”).

3. Federal and the Additional Plaintiff Insurers then served Employers Mutual Liability Insurance Company on October 15, 2023.

4. After service, counsel for Employers Insurance Company of Wausau contacted counsel for Federal and the Additional Plaintiff Insurers to explain that

Employers Insurance Company of Wausau is the proper defendant and that Employers Mutual Liability Insurance Company is an unrelated company.

b. Fireman's Fund Insurance Company and Westport Insurance Company

5. The Complaint named Fireman's Fund Insurance Company ("Fireman's Fund") as an insurer of Shaw under policy no. MXX03597972. After the filing of the Complaint, Fireman's Fund and Shaw provided a declaration to Federal and the Additional Plaintiff Insurers verifying that policy no. MXX03597972 was issued to an entity unrelated to Shaw and Shaw "acknowledges that no defense or indemnity obligations are owed by Fireman's Fund" under no. MXX03597972. A copy of the declaration is attached as **Exhibit 1**.

6. The Complaint also names Westport Insurance Company f/n/a/ Puritan Insurance Company ("Westport") an insurer of Shaw under policy nos. UL 674864, UL 670319 and UL 671697.

7. Shaw and Westport provided a stipulation stating that policy No. UL 674864 "has been exhausted by Westport's actual payment of the full amount of its \$10,000,000 aggregate limit of liability..." A copy of the stipulation is attached as **Exhibit 2**.

8. Shaw and Westport also provided a declaration that policy nos. UL 670319 and UL 671697 were issued to an entity entirely unrelated to Shaw

and Shaw “acknowledges that no defense or indemnity obligations are owed by Westport ” under policy nos. UL 670319 and UL 671697. A copy of the declaration is attached as **Exhibit 3**.

c. Fireman’s Fund Insurance Company and Westport Insurance Company

9. Attached to this Motion as **Exhibit 4** is the First Amended Complaint. The only substantive changes to the complaint are the insertion of Employers Insurance Company of Wausau in place of Employers Mutual Liability Insurance Company in the caption and in paragraph 14, the elimination of Fireman’s Fund as a party, and the elimination of Westport as a party.

10. Pursuant to Rule 15(a)(2), Federal moves this Court to allow Federal to amend the Complaint to substitute Employers Insurance Company of Wausau in place of Employers Mutual Liability Insurance Company, dismiss without prejudice Fireman’s Fund as a party, and dismiss without prejudice Westport as a party.

11. Rule 15(a)(2) states that “a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.”

12. No parties will be prejudiced by this amendment which now identifies the property party for service. No parties oppose the Motion.

13. Federal and the Additional Plaintiff Insurers will cooperate with any party with an answer already on file to have that answer be deemed an answer to the First Amended Complaint.

WHEREFORE, Federal and the Additional Plaintiff Insurers respectfully move this Court to grant this Motion.

Respectfully submitted this 20th day of December, 2023.

/s/ John W. Johnson

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CERTIFICATE OF SERVICE

I do hereby certify that on December 20, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to the following counsel of record:

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